

1999 DRAFTING REQUEST

Bill

Received: **12/02/1998**

Received By: **mlief**

Wanted: **As time permits**

Identical to LRB:

For: **Sheldon Wasserman (608) 266-7671**

By/Representing: **sarah**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters: **kunkemd**

Subject: **Education - miscellaneous**

Extra Copies: **PG, DAK, TAY, MJL**

Pre Topic:

No specific pre topic given

Topic:

Epinephrine pens in schools

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1	kunkemd 04/29/1999 kunkemd 09/01/1999	ygeller 04/29/1999 ygeller 09/02/1999	jfrantze 04/30/1999	_____	gretskl 04/30/1999		State
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/3	kunkemd	ygeller	mclark	_____	lrb_docadmin		

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/4			mclark	_____	lrb_docadmin	lrb_docadmin	
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			09/23/1999	_____	09/23/1999		

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Page 1

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/2		139 MRC 9/17	haugca 09/03/1999		lrb_docadmin 09/03/1999		

4/30/99 9:03:03 AM
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By/Representing: sarah

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Subject: Education - miscellaneous

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Epinephrine pens in schools

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By/Representing: sarah

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FE Sent For:

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FOX POINT-BAYSIDE SCHOOL DISTRICT

November 23, 1998

Dr. Sheldon Wasserman
3487 N. Lake Drive
Milwaukee, WI 53211

Re: Emergency Medical Treatment using Epipens

Dear Dr. Wasserman,

As you will recall, we discussed the "catch - 22" school districts find themselves in regarding the use of epipens for reactions to bee stings. The trend we have noticed in our district is that increasing numbers of young children are having allergic reactions to bee stings. If the parent is aware of the child's sensitivity, appropriate steps can be taken to alert the school and provide us with an epipen for emergency use if needed. However, as a physician, you also are aware that epipens are controlled by prescription and therein lies the problem. Our concern rests with the child who does not know that he or she may sustain such an allergic reaction due to lack of prior exposure. Our concern is what to do for this child while we wait for emergency medical response when there is such a simple solution

One possible solution we studied was whether or not we could just go ahead and use an epipen if deemed necessary. I have included our legal counsel's opinion which clearly tells us that, while covered by the Good Samaritan law, we would not have legal access to an epipen because they are controlled by prescription and all the administrative law attached thereto. A second possible solution may be for a modification in Wisconsin law to remove epipens from prescription status to an over-the-counter drug and/or legislation specifically designed to allow agencies, such as public schools, to administer this drug if deemed necessary.

At one time you had considered introducing possible legislation to alleviate this problem. I am wondering if this is still a viable issue that you are able to pursue and if I can be of any assistance to you.

Sincerely,

[Signature]
Janice I. Sodos, Ph.D.
District Administrator

ATTN: Connie Lief

FR: Sarah, Rep Wasserman
4-852

Rep. Wasserman
would like a rush
put on the epi
pen draft. Please
read this ~~over~~ &
let me know your
opinion. Thanks!

*Sarah
- signed
draft
Wasserman
4-852*

*→ Federal
Law*

*- allow to purchase
(if they want to)*

Janice I. Sodos, Ph.D.
District Administrator
(414) 351-7480
Fax: (414) 351-7166

Nicholas C. A. Alloto, CPA
Director-Business Services
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Linda Moore, Principal
Strommen Elementary School
7301 N. Longacre Road
(414) 351-7480
Fax: (414) 247-8870

Jill D. Wiedmann, Principal
Bevelde Middle School
601 E. Ellsworth Lane
(414) 351-7480
Fax: (414) 247-8863

Davis & Kuelthau, s.c.**ATTORNEYS AT LAW**111 E. Kilbourn, Suite 1400-Milwaukee, WI 53202-6613
414-276-0200-Cable Address SHIPLAW-Fax 414-276-9369**Writer's Direct Dial
(414) 225-1422****E-Mail Address:
dgv@daviskuelthau.com**

October 27, 1998

Janine I. Sodos, Ph.D
Superintendent of Schools
Fox Point-Bayside School District
7300 North Lombardy Road
Milwaukee, WI 53217

Re: Emergency Medical Treatment

Dear Dr. Sodos:

Pursuant to your request, we have reviewed the issue of whether the School Board could train employees to administer an "Epipen" to students who are having an allergic reaction to a bee sting. This has become a concern due to an increased frequency of bee stings among students. The District already has a policy regarding the administration of prescription medication which would cover the use of an Epipen when such use has been prescribed by a physician, dentist or podiatrist ("practitioners"). For example, if parents were aware that their child will have a severe reaction to a bee sting, then, under the District's existing policy, a District employee or volunteer could administer an Epipen shot if the child were stung by a bee, assuming a practitioner's prescription and parental consent.

The question raised by the Board concerns a situation where a child is having an allergic reaction to the bee sting and no parental consent or practitioner's prescription is on file. The issue is whether a District employee or volunteer could administer an epipen to a student having a severe allergic reaction without prior parental consent and a practitioner's prescription for the use of the epipen.

Under Section 118.29(3), Stats., public school employees and volunteers, other than health care professionals who render emergency care to a pupil are immune from civil liability. Specifically, the statute provides:

(3) Emergency care: civil liability exemption. Any school bus operator validly authorized under ss. 343.12 and 343.17(3)(c) to operate the school bus he or she is operating and any public or private school employee or volunteer, county handicapped children's education board employee or volunteer or cooperative educational service agency employee or volunteer, other than a health care professional, who in good faith renders emergency care

Janice I. Sodos, Ph.D.
October 27, 1998
Page 2

to a pupil of a public or private school is immune from civil liability for his or her acts or omissions in rendering such emergency care. The immunity from civil liability provided under this subsection is in addition to and not in lieu of that provided under s. 895.48(1).

Section 895.48(1), Stats., provides:

(1) Any person who renders emergency care at the scene of any emergency or accident in good faith shall be immune from civil liability for his or her acts or omissions in rendering such emergency care. This immunity does not extend when employees trained in health care or health care professionals render emergency care for compensation and within the scope of their usual and customary employment or practice at a hospital or other institution equipped with hospital facilities, at the scene of any emergency or accident, enroute to a hospital or other institution equipped with hospital facilities or at a physician's office.

Clearly, these statutes are intended to protect the school employee or volunteer who takes action in an emergency to assist a student. However, these statutes do not appear to anticipate or authorize the use of prescription medication in an emergency situation absent specific health care training. Further, since an epipen requires a prescription, it would be difficult at best for the District to legally obtain and use the epipen since a physician would be required to write the prescription. Finally, given the degree of detail and specificity found in Sec. 118.29, Stats., regarding the administration of a drug or a prescription drug, it is doubtful that the legislature intended to authorize a school district to administer a prescription drug without parental consent and a physician's prescription. Similarly, the legislature recently enacted a law authorizing school districts to allow students to carry and use asthma inhalers as required. Sec. 118.291, Stats. A copy of this statute is attached for your review. Given the procedures and limitations set forth in both of these statutes, it does not appear that the legislature intends to grant school districts blanket authority to develop and administer policies on the use of prescription drugs.

In summary, we do not recommend the District develop a policy regarding the emergency administration of prescription medicine to students without prior parental consent and a prescription from a practitioner. Such a policy appears to go beyond the scope of the School Board's authority under current law.

As an alternative, we recommend that a parental education program be implemented by the District to make parents fully aware of the risks. Ideally, if parents had their children tested

Janice I. Sodos, Ph.D.
October 27, 1998
Page 3

to determine if the child had an allergic reaction to bee stings, this would allow the District to administer the epipen, when necessary, under the District's existing policy.

Finally, based on our discussions regarding this issue, it appears that State Representative Wasserman recognizes the benefit to students if school districts are able to train employees and/or volunteers to use epipens in emergency situations and may be willing to introduce legislation addressing the use of epipens. Ultimately, this is probably the best solution to the problem since it would address any potential liability concerns arising under the current state of the law.

Should you have any further questions in this regard, please call.

Very truly yours,

DAVIS & KUELTHAU, S.C.



Daniel G. Vliet

DGV:lmb

Enclosure

1997 Assembly Bill 783

Date of enactment: April 13, 1998
 Date of publication*: April 27, 1998

1997 WISCONSIN ACT 77

AN ACT to amend 119.04 (1); and to create 118.291 of the statutes; relating to: allowing pupils to possess and use metered dose and dry powder inhalers.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 118.291 of the statutes is created to read:

118.291 Asthmatic pupils; possession and use of inhalers. (1) While in school, at a school-sponsored activity or under the supervision of a school authority, an asthmatic pupil may possess and use a metered dose inhaler or dry powder inhaler if all of the following are true:

(a) The pupil uses the inhaler before exercise to prevent the onset of asthmatic symptoms or uses the inhaler to alleviate asthmatic symptoms.

(b) The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the pupil's parent or guardian.

(c) The pupil has provided the school principal with a copy of the approval or approvals under par. (b).

(2) No school district, school board or school district employee is civilly liable for damage to a pupil caused by a school district employee who prohibits a pupil from using an inhaler because of the employee's good faith belief

that the requirements of sub. (1) had not been satisfied or who allows a pupil to use an inhaler because of the employee's good faith belief that the requirements of sub. (1) had been satisfied.

SECTION 2. 119.04 (1) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.03 (3) (c), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.38 (2), 115.40, 115.45, 118.001 to 118.04, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.18, 118.19, 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), 118.245, 118.255, 118.258, 118.291, 118.30 to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (24), 120.125, 120.13 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34) and (35) and 120.14 are applicable to a 1st class city school district and board.

SECTION 3. Effective date.

(1) This act takes effect on September 1, 1999.

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state (the date of publication may not be more than 10 working days after the date of enactment).



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-8522

REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

January 19, 1999

MEMORANDUM

To: Representative Sheldon Wasserman

From: Mark Kunkel, Legislative Attorney, 266-0131

Subject: Emergency medical treatment using epipens

I understand that you are interested in drafting legislation that would exempt school personnel from liability for administering "epipens" (i.e., devices for injecting epinephrine as an emergency treatment for allergic reactions to insect stings and bites) to students who have allergic reactions to bee stings. In particular, I understand you are interested in legislation dealing with students who have not been previously diagnosed as having allergies to bee stings and, therefore, do not have prescriptions for an epipen.

The main problem posed by any such legislation is, as pointed out by Dr. Sodos in her letter to you dated November 23, 1998, that school personnel do not have access to epipens, which may be dispensed only under a prescription. Under federal law, a prescription drug is a drug that the Federal Drug Administration (FDA) has determined, based on its "toxicity or other potentiality for harmful effect", is not safe for use, "except under the supervision of practitioner licensed by law to administer such drug." 21 USC s. 353 (b) (1) (A). Such a drug may be dispensed only "upon written prescription of a practitioner licensed by law to administer such drug." *Id.* Because the FDA has classified epinephrine as a prescription drug, it may not be dispensed without a prescription and is therefore unavailable for use by school personnel.

Federal law controls what constitutes a prescription drug. Therefore, any attempt by the state legislature to classify epinephrine as nonprescription drug is very likely to fail on preemption grounds. Another approach may be to allow a physician to write a prescription for a pharmacist to dispense epipens for use by school personnel. This approach would require amending the statutory requirement that a prescription order identify the patient. See s. 450.11 (1), stats. In addition, you may want to consider immunizing from liability both the physician who writes such a prescription and the school personnel who use epipens under such a prescription. Also, you may want to consider requiring school personnel to satisfy certain requirements, such as education or training in the proper use of epipens, in order to be allowed to use epipens.

Another approach may be to consider allowing certain school personnel to write prescriptions for epipens. Federal law does not specify who may prescribe drugs. As noted above, federal law requires only that a "licensed practitioner" write a prescription for a prescription drug. State law is the

source of authority for what constitutes a "licensed practitioner". Please contact me if you want to pursue this option. However, note that this option, like the creation of *any* licensing scheme under state law, will have to address many issues. For example, you will need to consider the educational and other qualifications necessary for licensure, the scope of authority granted by the license, as well as the proper state agency for granting such licenses. In addition, this approach is unusual in that it grants traditional health care responsibilities to nonhealth care professionals.

Instead of the above approaches, you might want to consider requiring school boards to send seasonal notices to parents and guardians alerting them to the dangers of bee stings and encouraging them to be tested for allergic reactions. The notice may also inform parents and guardians that they may authorize school personnel to administer epipens that are prescribed for students who test positive for bee sting allergies. As you know, under certain circumstances, school personnel are generally immune from liability for administering prescription drugs in compliance with written instructions of practitioners if parents or guardians consent in writing. See s. 118.29 (2) (a) 2. and 3., stats. Although school district administrators must authorize personnel in writing to administer such drugs, this last approach may be the least administratively burdensome.

If you want to discuss these issues, please contact me at your earliest convenience. I would be happy to meet with you or your constituents to discuss this matter.

cc. Lonnie Lief, Legislative Attorney

Sarah - Wasserman 6-7671

Bill like AB 783 - (LRB-4597/2)

- Epinephrine pen
for allergic emergencies -

~~over~~

Not sure ~~what~~ how she wants bill to work -
whether to allow pupil to use pens or not
I referred her to s.118.29 + said sch bds may
purchase pens + administer precep drugs.
Problem w/pens - produce a "high"
She will call me back.

12/2 TCW/Sarah

Sch bd wants to allow Sch districts
to obtain epinephrine + administer
to pupils who have no prior knowledge
of having allergic reactions.

I told her this was very problematic b/c
it would involve amend. g chs. 448 + 450
that it would allow people to practice
med w/o a license + that it would
create more problems than it would solve.

She acknow. the problems but requested a
prelim draft anyway. I said I'd get her a
memo re: problems + that I couldn't
guarantee when she would get draft b/c
involved potentially 2 add. drafters.

Kunkel, Mark

From: Lief, Madelon
Sent: Monday, February 08, 1999 3:46 PM
To: Kunkel, Mark
Subject: Draft for Wasserman

I forwarded LRB-1095 to your in box; it's the epi pen request. If Wasserman no longer wants it, please cancel the request and let me know. If he wants it, please change the primary drafter to MDK and list me as an alternate if there's something I need to do in the education chapters.

Thanks.

Madelon J. Lief
Legislative Attorney
State of Wisconsin
Legislative Reference Bureau

madclon.lief@legis.state.wi.us
608-267-7380

Full Product Information

[Back to home page](#)

DESCRIPTION: The EpiPen Auto-Injectors contain 2 mL Epinephrine Injection for emergency intramuscular use. Each EpiPen Auto-injector delivers a single dose of 0.3 mg epinephrine from Epinephrine Injection, USP, 1: 1000 (0.3 mL) in a sterile solution. Each EpiPen Jr. Auto-Injector delivers a dose of 0.15 mg epinephrine from Epinephrine Injection, USP, 1:2000 (0.3mL) in a sterile solution. Each 0.3 mL also contains 1.8 mg sodium chloride, 0.5 mg sodium metabisulfite, hydrochloric acid to adjust pH, and Water for Injection. The pH range is 2.5-5.0.

CLINICAL PHARMACOLOGY: Epinephrine is a sympathomimetic drug, acting on both alpha and beta receptors. It is the drug of choice for the emergency treatment of severe allergic reactions (Type 1) to insect stings or bites, foods, drugs, and other allergens. It can also be used in the treatment of idiopathic or exercise-induced anaphylaxis. Epinephrine when given subcutaneously or intramuscularly has a rapid onset and short duration of action.

INDICATIONS AND USAGE: Epinephrine is indicated in the emergency treatment of allergic reactions (anaphylaxis) to insect stings or bites, foods, drugs and other allergens as well as idiopathic or exercise-induced anaphylaxis. The EpiPen Auto-Injector is intended for immediate self-administration by a person with a history of an anaphylactic reaction.

EpiPen® is also indicated for temporary emergency treatment of severe lifethreatening asthma attacks. Reactions may occur within minutes after exposure and consist of flushing, apprehension, syncope, tachycardia, thready or unobtainable pulse associated with a fall in blood pressure, convulsions, vomiting, diarrhea and abdominal cramps, involuntary voiding, wheezing, dyspnea due to laryngeal spasm, pruritis, rashes, urticaria or angioedema. The EpiPen is designed as emergency supportive therapy only and is not a replacement or substitute for immediate medical or hospital care.

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CONTRAINDICATIONS: There are no absolute contraindications to the use of epinephrine in a life-threatening situation.

WARNINGS: Epinephrine is light sensitive and should be stored in the tube provided. Store at room temperature (15 -30 C/59 -86 F). Do not refrigerate. Before using, check to make sure solution in Auto-Injector is not discolored.

Replace the Auto-Injector if the solution is discolored or contains a precipitate.

Avoid possible inadvertent intravascular administration. Select an appropriate injection site such as the thigh.

DO NOT INJECT INTO BUTTOCK. Large doses or accidental intravenous injection of epinephrine may result in cerebral hemorrhage due to sharp rise in blood pressure. **DO NOT INJECT INTRAVENOUSLY.** Rapidly acting vasodilators can counteract the marked pressor effects of epinephrine.

Epinephrine is the preferred treatment for serious allergic or other emergency situations even though this product contains sodium metabisulfite, a sulfite that may in other products cause allergic-type reactions including anaphylactic symptoms of life-threatening or less severe asthmatic episodes in certain susceptible persons. The alternatives to using epinephrine in a life-threatening situation may not be satisfactory. The presence of a sulfite in this product should not

life-threatening situation may not be satisfactory. The presence of a sumic in this product should not deter administration of the drug for treatment of serious allergic or other emergency situations.

Accidental injection into the hands or feet may result in loss of blood flow to the affected area and should be avoided. If there is an accidental injection into these areas, advise the patient to go immediately to the nearest emergency room for treatment. EpiPen should ONLY be injected into the anterolateral aspect of the thigh.

PRECAUTIONS: Epinephrine is ordinarily administered with extreme caution to patients who have heart disease. Use of epinephrine with drugs that may sensitize the heart to arrhythmias, e.g., digitalis, mercurial diuretics, or quinidine, ordinarily is not recommended. Anginal pain may be induced by epinephrine in patients with coronary insufficiency. The effects of epinephrine may be potentiated by tricyclic antidepressants and monoamine oxidase inhibitors. Hyperthyroid individuals, individuals with cardiovascular disease, hypertension or diabetes, elderly individuals, pregnant women, and children under 30 kg (66 lbs.) body weight may be theoretically at greater risk of developing adverse reactions after epinephrine administration.

Despite these concerns, epinephrine is essential for the treatment of anaphylaxis. Therefore, patients with these conditions, and/or any other person who might be in a position to administer EpiPen or EpiPen Jr. to a patient experiencing anaphylaxis should be carefully instructed in regard to the circumstances under which this life-saving medication should be used.

CARCINOGENESIS, MUTAGENESIS, IMPAIRMENT OF FERTILITY:

Studies of epinephrine in animals to evaluate the carcinogenic and mutagenic potential or the effect on fertility have not been conducted.

USAGE IN PREGNANCY: Pregnancy Category C; Epinephrine has been shown to be teratogenic in rats when given in doses about 25 times the human dose. There are no adequate and well-controlled studies in pregnant women. Epinephrine should be used during pregnancy only if the potential benefit justifies the potential risk to the fetus.

PEDIATRIC USE: Epinephrine may be given safely to children at a dosage appropriate to body weight (see Dosage and Administration).

ADVERSE REACTIONS: Side effects of epinephrine may include palpitations, tachycardia, sweating, nausea and vomiting, respiratory difficulty, pallor, dizziness, weakness, tremor, headache, apprehension, nervousness and anxiety.

Cardiac arrhythmias may follow administration of epinephrine

OVERDOSAGE: Overdosage or inadvertent intravascular injection of epinephrine may cause cerebral hemorrhage resulting from a sharp rise in blood pressure. Fatalities may also result from pulmonary edema because of peripheral vascular constriction together with cardiac stimulation.

DOSAGE AND ADMINISTRATION: Usual epinephrine adult dose for allergic emergencies is 0.3 mg. For pediatric use, the appropriate dosage may be 0.15 mg or 0.30 mg depending upon the body weight of the patient. However, the prescribing physician has the option of prescribing more or less than these amounts, based on careful assessment of each individual patient and recognizing the life-threatening nature of the reactions for which this drug is being prescribed. With severe persistent anaphylaxis, repeat injections with an additional EpiPen may be necessary.

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[Back to home page](#)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1095/1

MDK:.....

NOTE

1999 BILL

By tomorrow
FR 10AM
4/20
2:00pm

gen cat

- 1 AN ACT ...; relating to: certifying certain school employees and volunteers to use
2 epinephrine auto-injectors on pupils ~~and~~ granting immunity from civil liability
3 for such use. *and granting rule-making authority* ✓

Analysis by the Legislative Reference Bureau

This bill allows a person who is certified by the department of regulation and licensing (DORL) to use an epinephrine auto-injector to administer epinephrine to a pupil who experiences a life threatening allergic reaction. The bill defines "epinephrine auto-injector" as a device that is used for the automatic injection of epinephrine into the human body to prevent or treat a life-threatening allergic reaction. A person is immune from civil liability for an act or omission in using an epinephrine auto-injector under the bill unless the person engages in conduct that the person should realize creates a substantial and unreasonable risk of death or great bodily harm. Persons who are eligible for certificates under the bill include school bus drivers and public, private and charter school employees and volunteers. Also eligible are persons who are employed by or volunteer with a county children with disabilities education board or a cooperative educational service agency. In addition, to be eligible for a certificate, a person must pay a fee and satisfy any education, training or competency requirements established in rules promulgated by DORL with the advice of the medical examining board. The rules may require a person to pass an examination.

The bill also makes certain changes to current law regarding prescription orders. Under current law, a pharmacist may dispense an epinephrine auto-injector

BILL

only if a health care practitioner has made a prescription order for the epinephrine auto-injector that identifies the patient who is to use the epinephrine auto-injector. This bill allows a pharmacist to dispense an epinephrine auto-injector to a person who holds a certificate issued under the bill if a health care practitioner makes a prescription order that identifies the certificate holder. A health care practitioner is not required to identify a patient on such a prescription order.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 118.29 (1) (bg) of the statutes is created to read:

2 118.29 (1) (bg) "Epinephrine auto-injector" has the meaning given in s. 440.03
3 (15) (a) 1.✓

4 **SECTION 2.** 118.29 (1) (br) of the statutes is created to read:

5 118.29 (1) (br) "Epinephrine certificate holder"✓ means an individual who holds
6 a valid certificate granted by the✓ department of regulation and licensing under s.
7 440.03 (15) (b).✓

8 **SECTION 3.** 118.29 (2m) of the statutes is created to read:

9 118.29 (2m)✓ **EPINEPHRINE CERTIFICATE HOLDERS; CIVIL LIABILITY EXEMPTION.**
10 Notwithstanding chs. 441 and 448,✓ an epinephrine certificate holder may use an
11 epinephrine auto-injector to administer epinephrine to any pupil who experiences
12 a✓ life-threatening allergic reaction. An epinephrine certificate holder is immune
13 from civil liability for his or her acts or omissions in using an epinephrine
14 auto-injector under this✓ subsection unless the act or omission constitutes a high
15 degree of negligence.

16 **SECTION 4.** 118.29 (4) of the statutes is amended to read:

17 118.29 (4) **WRITTEN POLICIES.** Any school board, county children with
18 disabilities education board, cooperative educational service agency or governing

BILL

body of a private school whose employees or volunteers may be authorized to administer drugs or prescription drugs to pupils under ~~this section~~ sub. (2) (a) shall adopt a written policy governing the administration of drugs and prescription drugs to pupils under sub. (2) (a). In developing the policy, the school board, board, agency or governing body shall seek the assistance of one or more appropriate health care professionals who are employees of the school board, board, agency or governing body or are providing services or consultation under s. 121.02 (1) (g). The policy shall include procedures for obtaining and filing in the school or other appropriate facility the written instructions and consent required under sub. (2) (a), for the periodic review of such written instructions, for the storing of drugs and prescription drugs, for record keeping and for the appropriate instruction of persons who may be authorized to administer drugs or prescription drugs to pupils under ~~this section~~ sub. (2) (a).

History: 1983 a. 334; 1985 a. 146 s. 8; 1985 a. 218; 1987 a. 14, 399; 1989 a. 56, 102, 105; 1991 a. 103; 1997 a. 164.

SECTION 5. 118.29 (5) of the statutes is amended to read:

118.29 (5) EXEMPTION. No employe except a health care professional may be required to administer a drug or prescription drug to a pupil under ~~this section~~ sub. (2) (a) by any means other than ingestion.

History: 1983 a. 334; 1985 a. 146 s. 8; 1985 a. 218; 1987 a. 14, 399; 1989 a. 56, 102, 105; 1991 a. 103; 1997 a. 164.

SECTION 6. 440.03 (15) of the statutes is created to read:

440.03 (15) (a) In this subsection:

1. "Epinephrine auto-injector" means a device used for the automatic injection of epinephrine into the human body to prevent or treat a life-threatening allergic reaction.

2. "Epinephrine certificate" means a certificate granted under par. (b).

3. "School employe or volunteer" means any of the following:

BILL**SECTION 6**

1 a. An individual who is employed by or volunteers at or with a public school
2 described under s. 115.01 (1),[✓] a charter school, as defined in s. 115.001 (1), a private
3 school, as defined in s. 115.001 (3r),[✓] a county children with disabilities education
4 board or a cooperative educational service agency.

5 b. A school bus operator validly authorized under ss. 343.12[✓] and 343.17 (3) (c)[✓]
6 to operate a school bus.

7 (b) The department[✓] shall grant an epinephrine certificate to an individual who
8 pays the fee specified in s. 440.05 (1)[✓] and submits evidence satisfactory to the
9 department of each of the following:

10 1. That the individual is a school employe or volunteer.

11 2. That the individual satisfies the requirements established in rules
12 promulgated under par. (c).[✓]

13 (c) With the advice of the medical examining board, the department shall
14 promulgate rules establishing the education, training or competency requirements
15 that an applicant must satisfy in order to be issued an epinephrine certificate. The
16 rules shall require an applicant to complete education or training that ensures that
17 the applicant is competent to use an epinephrine auto-injector to administer
18 epinephrine to a pupil who experiences a life-threatening allergic reaction and the
19 rules may require an applicant to pass an examination, administered or approved
20 by the department, to determine such competence.

21 (d) A epinephrine certificate remains in effect unless the certificate is
22 suspended or revoked by the department under par. (e).[✓]

23 (e) Subject to the rules promulgated under sub. (1),[✓] the department may
24 suspend or revoke an epinephrine certificate if it finds that the certificate holder is
25 not competent in the emergency use of an epinephrine auto-injector.

BILL

1 **SECTION 7.** 450.01 (1) (intro.) of the statutes is amended to read:

2) 450.01 (1) (intro.) "Administer" means ~~the~~ any of the following

3 (ag) The direct application of a vaccine or a prescribed drug or device, whether

4 by injection, ingestion or any other means, to the body of a patient or research subject

5 by any of the following:

History: 1985 a. 146; 1987 a. 65; 1991 a. 114; 1995 a. 448; 1997 a. 277, 68; 1997 a. 237 s. 727m.

6 SECTION 8. 450.01 (1) (a), (b) and (c) of the statutes are renumbered 450.01 (1)

7) (ag) 1

8 SEC. # 450.01 (1)(c) of the statutes, as created by 1117, which is renumbered
SECTION 9. 450.01 (1) (ar) of the statutes is created to read: 450.01 (1)(ag)3.

9 450.01 (1) (ar) The direct application of epinephrine to the body of pupil by an

epinephrine certificate holder using an epinephrine auto-injector.

SECTION 10. 450.01 (7) of the statutes is amended to read:

2 450.01 (7) "Dispense" means to deliver a prescribed drug or device to an

3 ultimate user or, research subject or epinephrine certificate holder by or pursuant

4 to the prescription order of a practitioner, including the compounding, packaging or

15 labeling necessary to prepare the prescribed drug or device for delivery.

History: 1985 a. 146; 1987 a. 65; 1991 a. 114; 1995 a. 448; 1997 a. 27. 68; 1997 a. 237 s. 727m.

SECTION 11. 450.01 (11g) of the statutes is created to read:

450.01 (11g) "Epinephrine auto-injector" has the meaning given in s. 440.03

18 (15) (a) 1.

19 **SECTION 12.** 450.01 (11r) of the statutes is created to read:

20 450.01 (11r) "Epinephrine certificate holder" means an individual who holds

21 a valid certificate granted by the department under under s. 440.03 (15) (b).

SECTION 13. 450.01 (21) of the statutes is renumbered 450.01 (21) (intro.) and

23 amended to read:

BILL

SECTION 13

1 450.01 (21) (intro.) "Prescription order" means an order transmitted orally,
2 electronically or in writing by a practitioner for a [✓]any of the following:

3 (a) A drug or device for a particular patient.

4 History: 1985 a. 146; 1987 a. 65; 1991 a. 114; 1995 a. 448; 1997 a. 27, 68; 1997 a. 237 s. 727m.

4 **SECTION 14.** 450.01 (21) (b) of the statutes is created to read:

5 450.01 (21) (b) An epinephrine auto-injector for use by a particular
6 epinephrine certificate holder under s. [✓]118.29 (2m).

7 **SECTION 15.** 450.09 (6) of the statutes is amended to read:

8 450.09 (6) MEDICATION PROFILE RECORD SYSTEM. Every pharmacy shall maintain
9 a medication profile record system of all drug products dispensed for a particular
10 patient [✓]or epinephrine certificate holder according to the minimum standards for
11 such systems established by the board by rule. Every practitioner shall maintain a
12 record of all drug products dispensed to each patient or epinephrine certificate holder
13 according to standards established by the appropriate examining board by rule. The
14 standards established by each examining board shall require the recording of all
15 renewal dispensing information required by federal and state law and related rules
16 and regulations.

17 History: 1985 a. 146.

17 **SECTION 16.** 450.11 (1) of the statutes is renumbered 450.11 (1) (a) and
18 amended to read:

19 450.11 (1) (a) No person may dispense any prescribed drug or device except
20 upon the prescription order of a practitioner. All Except as provided in par. [✓](b), all
21 prescription orders shall specify the date of issue, the name and address of the
22 patient, the name and address of the practitioner, the name and quantity of the drug
23 product or device prescribed, directions for the use of the drug product or device and,
24 if the order is written by the practitioner, the signature of the practitioner. Any oral

BILL

1 prescription order shall be immediately reduced to writing by the pharmacist and
2 filed according to sub. (2).

History: 1985 a. 146; 1997 a. 27, 175, 283.

3 **SECTION 17.** 450.11 (1) (b) of the statutes is created to read:

4 450.11 (1) (b) The name and address of a patient is not required to be specified
5 on a prescription order specified in s. 450.01 (21) (b) if the prescription order specifies
6 the name and address of the epinephrine certificate holder.

7 **SECTION 18.** 450.11 (1m) of the statutes is amended to read:

8 450.11 (1m) ELECTRONIC TRANSMISSION. Except as provided in s. 453.068 (1) (c)
9 4., a practitioner may transmit a prescription order electronically only if the patient
10 or, for a prescription order specified in s. 450.01 (21) (b), the epinephrine certificate
11 holder approves the transmission and the prescription order is transmitted to a
12 pharmacy designated by the patient or epinephrine certificate holder.

History: 1985 a. 146; 1997 a. 27, 175, 283.

13 **SECTION 19.** 450.11 (3) of the statutes is amended to read:

14 450.11 (3) PREPARATION OF PRESCRIPTION DRUGS. No person other than a
15 pharmacist or practitioner or their agents and employees as directed, supervised and
16 inspected by the pharmacist or practitioner may prepare, compound, dispense or
17 prepare for delivery ~~for a patient~~ any prescription drug for a patient or an
18 epinephrine auto-injector for use by an epinephrine certificate holder.

History: 1985 a. 146; 1997 a. 27, 175, 283.

19 **SECTION 20.** 450.11 (4) (a) 5. of the statutes is amended to read:

20 450.11 (4) (a) 5. The full name of the patient or, for a prescription order specified
21 in s. 450.01 (21) (b), the full name of the epinephrine certificate holder.

History: 1985 a. 146; 1997 a. 27, 175, 283.

22 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1095/1dn

MDK:.....

jlq

Representative Wasserman:

Please review this bill very carefully to make sure it achieves your intent. Note that I made a number of assumptions about how to proceed and, depending on your intent, you may want to make some changes. In particular, please note the following:

1. The bill's definition of "school employe or volunteer" is intended to cover the same individuals who may qualify for immunity under s. 118.29 (2), stats.

2. Instead of allowing a certificate holder to make a prescription order for an epinephrine auto-injector, this bill allows a practitioner such as a physician to make a prescription order that allows a pharmacist to dispense an auto-injector to a certificate holder. I took this approach because it causes less disruption to current law regarding prescription orders. Is this okay?

3. The bill requires DORL to issue a certificate. Is this okay, or should a different agency, such as DPI, issue the certificates? Also note that you may want to structure the bill so that a certificate is not necessary. Note, however, that requiring a certificate is a good way to ensure that a person is competent to use an epinephrine auto-injector. Please let me know if you want to consider any alternatives to requiring a certificate.

4. Like other certificates and licenses issued by DORL, the bill requires a person to pay a fee for a certificate. However, unlike other DORL certificates and licenses, a certificate under the bill does not have to be renewed every 2 years. Is this okay?

5. On a point related to the above item, do you want to require schools to pay the certificate fee on behalf of an employe or volunteer? It may also be possible to redraft the bill so that no fee is required for a certificate. However, this approach would raise the issue of how to pay for DORL's costs in issuing certificates.

6. The bill does not address the issue of payment for epinephrine auto-injectors. Do you want to address this issue? For example, do you want to appropriate money so that schools can purchase the injectors?

Please contact me if you have any redraft instructions or questions.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.statc.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1095/1dn
MDK:jlg:jf

April 29, 1999

Representative Wasserman:

Please review this bill very carefully to make sure it achieves your intent. Note that I made a number of assumptions about how to proceed and, depending on your intent, you may want to make some changes. In particular, please note the following:

1. The bill's definition of "school employe or volunteer" is intended to cover the same individuals who may qualify for immunity under s. 118.29 (2), stats.

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Please contact me if you have any redraft instructions or questions.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

Kunkel, Mark

From: Osterberg, Sarah
Sent: Wednesday, August 25, 1999 2:02 PM
To: Kunkel, Mark
Subject: FW: Epi-pen Legislation drafting instructions

Mark,

Below please find a note from Bayside-Fox Point School District Superintendent Jan Sodos, who has been working with us on the epi pen legislation. Please make changes to the draft per her direction.

We hope to send out a cosponsorship memo next week, so if you could make the changes by next Tuesday the 31st, Rep. Wasserman will be very appreciative.

Thanks!

Sarah
Wasserman Office

-----Original Message-----

From: JSodos@aol.com [<mailto:JSodos@aol.com>] <<mailto:JSodos@aol.com>>
Sent: Wednesday, August 25, 1999 9:25 AM
To: Rep.Wasserman@legis.state.wi.us
Subject: Epi-pen Legislation

Thank you for following thru on this legislation. The entire bill looks fine to both Jeff Cameron, M.D., our Board President and me.

Mark D. Kunkel raised a number of issues regarding this proposal in a cover letter addressed to you. From a school implementation perspective, items 1-3 are fine.

Paragraph 4 discussed the certificate fee. I believe it is reasonable and fair for a public school to pay a modest certificate fee to cover expenses. If it is expensive (\$50+), perhaps public schools could have a special rate to enable them to have multiple employees licensed, depending on the size/needs of the district, without creating an undue burden. I also believe that school districts should pay this fee on behalf of an employee or volunteer.

Paragraph 5 discusses the issue of payment for the actual epinephrine auto-injectors. This should be a school district responsibility if they so choose to participate. I would think it would be an administrative nightmare for the state to have to reimburse or provide a funding mechanism for such a small item. Again, the bill is written to be voluntary on the part of the school district. I cannot believe the cost of either the certificate fee (if \$50 or less) and the cost of the epi-pen would prohibit a district from taking advantage of this law if it wanted to do so.

I would be very happy to discuss support for this bill with Alberta. Please advise.

Jan Sodos

541

1999 BILL

Regen

1 AN ACT *to renumber* 450.01 (1) (a) and (b) and 450.01 (1) (c); *to renumber and*
 2 *amend* 450.01 (21) and 450.11 (1); *to amend* 118.29 (4), 118.29 (5), 450.01 (1)
 3 (intro.), 450.01 (7), 450.09 (6), 450.11 (1m), 450.11 (3) and 450.11 (4) (a) 5.; and
 4 *to create* 118.29 (1) (bg), 118.29 (1) (br), 118.29 (2m), 440.03 (15), 450.01 (1) (ar),
 5 450.01 (11g), 450.01 (11r), 450.01 (21) (b) and 450.11 (1) (b) of the statutes;
 6 **relating to:** certifying certain school employees and volunteers to use
 7 epinephrine auto-injectors on pupils, granting immunity from civil liability for
 8 such use and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill allows a person who is certified by the department of regulation and licensing (DORL) to use an epinephrine auto-injector to administer epinephrine to a pupil who experiences a life threatening allergic reaction. The bill defines "epinephrine auto-injector" as a device that is used for the automatic injection of epinephrine into the human body to prevent or treat a life-threatening allergic reaction. A person is immune from civil liability for an act or omission in using an epinephrine auto-injector under the bill unless the person engages in conduct that the person should realize creates a substantial and unreasonable risk of death or great bodily harm. Persons who are eligible for certificates under the bill include

BILL

INSERT 2C

INSERT 2A

~~School bus drivers and public, private and charter school employees and volunteers. Also eligible are persons who are employed by or volunteer with a county children with disabilities education board or a cooperative educational service agency.~~ In addition, to be eligible for a certificate, a person must pay a fee and satisfy any education, training or competency requirements established in rules promulgated by DORL with the advice of the medical examining board. The rules may require a person to pass an examination.

INSERT 2B

The bill also makes certain changes to current law regarding prescription orders. Under current law, a pharmacist may dispense an epinephrine auto-injector only if a health care practitioner has made a prescription order for the epinephrine auto-injector that identifies the patient who is to use the epinephrine auto-injector. This bill allows a pharmacist to dispense an epinephrine auto-injector to a person who holds a certificate issued under the bill if a health care practitioner makes a prescription order that identifies the certificate holder. A health care practitioner is not required to identify a patient on such a prescription order.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 118.29 (1) (bg) of the statutes is created to read:

118.29 (1) (bg) "Epinephrine auto-injector" has the meaning given in s. 440.03 (15) (a) 1.

SECTION 2. 118.29 (1) (br) of the statutes is created to read:

118.29 (1) (br) "Epinephrine certificate holder" means an individual who holds a valid certificate granted by the department of regulation and licensing under s. 440.03 (15) (b).

SECTION 3. 118.29 (2m) of the statutes is created to read:

118.29 (2m) EPINEPHRINE CERTIFICATE HOLDERS; CIVIL LIABILITY EXEMPTION. Notwithstanding chs. 441 and 448, an epinephrine certificate holder may use an epinephrine auto-injector to administer epinephrine to any pupil who experiences a life-threatening allergic reaction. An epinephrine certificate holder is immune from civil liability for his or her acts or omissions in using an epinephrine

BILL

1 auto-injector under this subsection unless the act or omission constitutes a high
2 degree of negligence.

3 **SECTION 4.** 118.29 (4) of the statutes is amended to read:

4 118.29 (4) WRITTEN POLICIES. Any school board, county children with
5 disabilities education board, cooperative educational service agency or governing
6 body of a private school whose employees or volunteers may be authorized to
7 administer drugs or prescription drugs to pupils under ~~this section~~ sub. (2) (a) shall
8 adopt a written policy governing the administration of drugs and prescription drugs
9 to pupils under sub. (2) (a). In developing the policy, the school board, board, agency
10 or governing body shall seek the assistance of one or more appropriate health care
11 professionals who are employees of the school board, board, agency or governing body
12 or are providing services or consultation under s. 121.02 (1) (g). The policy shall
13 include procedures for obtaining and filing in the school or other appropriate facility
14 the written instructions and consent required under sub. (2) (a), for the periodic
15 review of such written instructions, for the storing of drugs and prescription drugs,
16 for record keeping and for the appropriate instruction of persons who may be
17 authorized to administer drugs or prescription drugs to pupils under ~~this section~~ sub.
18 (2) (a).

19 **SECTION 5.** 118.29 (5) of the statutes is amended to read:

20 118.29 (5) EXEMPTION. No employee except a health care professional may be
21 required to administer a drug or prescription drug to a pupil under ~~this section~~ sub.
22 (2) (a) by any means other than ingestion.

23 **SECTION 6.** 440.03 (15) of the statutes is created to read:

24 440.03 (15) (a) In this subsection:

BILL

INSERT 4-1

INSERT 4-4

1 21. "Epinephrine auto-injector" means a device used for the automatic injection
2 of epinephrine into the human body to prevent or treat a life-threatening allergic
3 reaction.

4 32. "Epinephrine certificate" means a certificate granted under par. (b).

5 63. "School employe or volunteer" means any of the following:

6 a. An individual who is employed by or volunteers at or with a public school
7 described under s. 115.01 (1), a charter school, as defined in s. 115.001 (1), a private
8 school, as defined in s. 115.001 (3r), a county children with disabilities education
9 board or a cooperative educational service agency. *an educational agency*

10 b. A school bus operator *period* validly authorized under ss. 343.12 and 343.17 (3) (c).

11 ~~to operate a school bus~~

12 (b) The department shall grant an epinephrine certificate to an individual who
13 pays the fee specified in s. 440.05 (1) and submits evidence satisfactory to the
14 department of each of the following:

15 1. That the individual is a school employe or volunteer.

16 2. That the individual satisfies the requirements established in rules
17 promulgated under par. (c).

18 (c) With the advice of the medical examining board, the department shall
19 promulgate rules establishing the education, training or competency requirements
20 that an applicant must satisfy in order to be issued an epinephrine certificate. The
21 rules shall require an applicant to complete education or training that ensures that
22 the applicant is competent to use an epinephrine auto-injector to administer
23 epinephrine to a pupil who experiences a life-threatening allergic reaction and the
24 rules may require an applicant to pass an examination, administered or approved
25 by the department, to determine such competence.

BILL

INSERT 5-5 ✓

1 (d) A epinephrine certificate remains in effect unless the certificate is
2 suspended or revoked by the department under par. (e).

3 (e) Subject to the rules promulgated under sub. (1), the department may
4 suspend or revoke an epinephrine certificate if it finds that the certificate holder is
5 not competent in the emergency use of an epinephrine auto-injector.

6 **SECTION 7.** 450.01 (1) (intro.) of the statutes is amended to read:

7 450.01 (1) (intro.) "Administer" means the any of the following:

8 (ag) The direct application of a vaccine or a prescribed drug or device, whether
9 by injection, ingestion or any other means, to the body of a patient or research subject
10 by any of the following:

11 **SECTION 8.** 450.01 (1) (a) and (b) of the statutes are renumbered 450.01 (1) (ag)

12 1. and 2.

13 **SECTION 9.** 450.01 (1) (ar) of the statutes is created to read:

14 450.01 (1) (ar) The direct application of epinephrine to the body of pupil by an
15 epinephrine certificate holder using an epinephrine auto-injector.

16 **SECTION 10.** 450.01 (1) (c) of the statutes, as created by 1997 Wisconsin Act 68,
17 is renumbered 450.01 (1) (ag) 3.

18 **SECTION 11.** 450.01 (7) of the statutes is amended to read:

19 450.01 (7) "Dispense" means to deliver a prescribed drug or device to an
20 ultimate user or, research subject or epinephrine certificate holder by or pursuant
21 to the prescription order of a practitioner, including the compounding, packaging or
22 labeling necessary to prepare the prescribed drug or device for delivery.

23 **SECTION 12.** 450.01 (11g) of the statutes is created to read:

24 450.01 (11g) "Epinephrine auto-injector" has the meaning given in s. 440.03
25 (15) (a) 1.

BILL**SECTION 13**

1 **SECTION 13.** 450.01 (11r) of the statutes is created to read:

2 450.01 (11r) “Epinephrine certificate holder” means an individual who holds
3 a valid certificate granted by the department under s. 440.03 (15) (b).

4 **SECTION 14.** 450.01 (21) of the statutes is renumbered 450.01 (21) (intro.) and
5 amended to read:

6 450.01 (21) (intro.) “Prescription order” means an order transmitted orally,
7 electronically or in writing by a practitioner for a any of the following:

8 (a) A drug or device for a particular patient.

9 **SECTION 15.** 450.01 (21) (b) of the statutes is created to read:

10 450.01 (21) (b) An epinephrine auto-injector for use by a particular
11 epinephrine certificate holder under s. 118.29 (2m).

12 **SECTION 16.** 450.09 (6) of the statutes is amended to read:

13 450.09 (6) MEDICATION PROFILE RECORD SYSTEM. Every pharmacy shall maintain
14 a medication profile record system of all drug products dispensed for a particular
15 patient or epinephrine certificate holder according to the minimum standards for
16 such systems established by the board by rule. Every practitioner shall maintain a
17 record of all drug products dispensed to each patient or epinephrine certificate holder
18 according to standards established by the appropriate examining board by rule. The
19 standards established by each examining board shall require the recording of all
20 renewal dispensing information required by federal and state law and related rules
21 and regulations.

22 **SECTION 17.** 450.11 (1) of the statutes is renumbered 450.11 (1) (a) and
23 amended to read:

24 450.11 (1) (a) No person may dispense any prescribed drug or device except
25 upon the prescription order of a practitioner. All Except as provided in par. (b), all

BILL

1 prescription orders shall specify the date of issue, the name and address of the
2 patient, the name and address of the practitioner, the name and quantity of the drug
3 product or device prescribed, directions for the use of the drug product or device and,
4 if the order is written by the practitioner, the signature of the practitioner. Any oral
5 prescription order shall be immediately reduced to writing by the pharmacist and
6 filed according to sub. (2).

7 **SECTION 18.** 450.11 (1) (b) of the statutes is created to read:

8 450.11 (1) (b) The name and address of a patient is not required to be specified
9 on a prescription order specified in s. 450.01 (21) (b) if the prescription order specifies
10 the name and address of the epinephrine certificate holder.

11 **SECTION 19.** 450.11 (1m) of the statutes is amended to read:

12 450.11 (1m) ELECTRONIC TRANSMISSION. Except as provided in s. 453.068 (1) (c)
13 4., a practitioner may transmit a prescription order electronically only if the patient
14 or, for a prescription order specified in s. 450.01 (21) (b), the epinephrine certificate
15 holder approves the transmission and the prescription order is transmitted to a
16 pharmacy designated by the patient or epinephrine certificate holder.

17 **SECTION 20.** 450.11 (3) of the statutes is amended to read:

18 450.11 (3) PREPARATION OF PRESCRIPTION DRUGS. No person other than a
19 pharmacist or practitioner or their agents and employees as directed, supervised and
20 inspected by the pharmacist or practitioner may prepare, compound, dispense or
21 prepare for delivery ~~for a patient~~ any prescription drug for a patient or an
22 epinephrine auto-injector for use by an epinephrine certificate holder.

23 **SECTION 21.** 450.11 (4) (a) 5. of the statutes is amended to read:

BILL

1 450.11 (4) (a) 5. The full name of the patient or, for a prescription order specified
2 in s. 450.01 (21) (b), the full name of the epinephrine certificate holder.

3 (END)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1095/2ins
MDK:.....

INSERT 2A:

^{NO}_{RP} an "educational agency", which is defined as a public, private or charter school or ^{NO}_{RP}

INSERT 2B:

✓ Also eligible are school bus drivers.

INSERT 2C:

The bill allows an educational agency ✓ or employer of a school bus driver to reimburse a person for the fee required for a certificate. If an educational agency or school bus driver employer chooses to make such a reimbursement, it must also reimburse the person for the cost of a reasonable number of epinephrine auto-injectors. DORL is required to promulgate rules that specify what constitutes a reasonable number of epinephrine auto-injectors.

INSERT 4-1:

1. "Educational agency" means a public school described under s. 115.01 (1), a charter school, as defined in s. 115.001 (1), ✓ a private school, as defined in s. 115.001 (3r), ✓ a county children with disabilities education board or a cooperative educational service agency.

INSERT 4-4:

4. "Epinephrine certificate holder" means an individual who holds a valid epinephrine certificate. ✓

5. "School bus operator" means a school bus operator validly authorized under ss. 343.12 ✓ and 343.17 (3) (c) ✓ to operate a school bus.

INSERT 5-5:

(f) An educational agency or employer of a school bus operator may reimburse an epinephrine certificate holder for the fee specified in s. 440.05 (1). ✓ An educational agency or employer of a school bus operator that reimburses an epinephrine certificate holder under this paragraph ✓ shall reimburse the epinephrine certificate holder for the cost of a reasonable number of epinephrine auto-injectors for use by

1 the epinephrine certificate holder. With the advice of the medical examining board,
2 the department[✓] shall promulgate rules that specify what constitutes a reasonable
3 number of epinephrine auto-injectors for purposes of this paragraph.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1095/2dn
MDK:.....

Representative Wasserman:

Under this version, the employer or school at which a person volunteers may, but is not required to, reimburse the person for the cost of a certificate. However, if the employer or school chooses to make such a reimbursement, it must also reimburse the person for a reasonable number of epinephrine auto-injectors. DORL must determine what constitutes a reasonable number by promulgating rules.

Please contact me if you have any questions.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1095/2dn

MDK;jlg:ch

September 2, 1999

Representative Wasserman:

Under this version, the employer or school at which a person volunteers may, but is not required to, reimburse the person for the cost of a certificate. However, if the employer or school chooses to make such a reimbursement, it must also reimburse the person for a reasonable number of epinephrine auto-injectors. DORL must determine what constitutes a reasonable number by promulgating rules.

Please contact me if you have any questions.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

Kunkel, Mark

From: Osterberg, Sarah
Sent: Friday, September 10, 1999 11:41 AM
To: Kunkel, Mark
Subject: RE: URGENT: epi pen bill draft instructions (last time, i hope!)

Mark:

Yes, that is what Sheldon had in mind.

Thanks again!

-s.

-----Original Message-----

From: Kunkel, Mark
Sent: Friday, September 10, 1999 11:40 AM
To: Osterberg, Sarah
Subject: RE: URGENT: epi pen bill draft instructions (last time, i hope!)

Sarah:

I have one question regarding the redraft:

Regarding the school employees/bus drivers who are allowed to use epipens under the bill, I assume that you want to allow them to use an epipen on any student that is having an allergic reaction, right? Even on a student who has not been previously diagnosed as being allergic to something? I will assume that this is what you want, unless I hear otherwise from you.

I should have a redraft done by the middle of next week so, if it isn't too much trouble, can you please get back in touch with me if you haven't gotten anything by Wednesday of next week?

Mark Kunkel
Legislative Attorney
State of Wisconsin
Legislative Reference Bureau

mark.kunkel@legis.state.wi.us
(608) 266-0131

-----Original Message-----

From: Osterberg, Sarah
Sent: Friday, September 10, 1999 11:29 AM
To: Kunkel, Mark
Subject: URGENT: epi pen bill draft instructions (last time, i hope!)

Hi, Mark:

Sheldon reviewed the epi pen draft (LRB 1095/2) again and has decided, after talking further with his school district folks, that it is too detailed and would create an unneeded bureaucracy. So, he would like it redrafted.

Please change the draft to simply allow school employees/bus drivers to use an epi pen to help a student having an allergic reaction. (Some schools and students are currently permitted to have them on school premises per the permission of the school board.) Grant said persons and the school district immunity from civil liability if the epi pen is used in good faith after 911 has been called.

Please let me know when you will be able to get this completed.

Thanks!

Morden 9/20
by 4:00pm

NOTE

1999 BILL

1 **AN ACT** ~~to renumber~~ 450.01 (1) (a) and (b) and 450.01 (1) (c); **to renumber and**
 2 **amend** 450.01 (21) and 450.11 (1); **to amend** 118.29 (4), 118.29 (5), 450.01 (1)
 3 (intro.), 450.01 (7), 450.09 (6), 450.11 (1m), 450.11 (3) and 450.11 (4) (a) 5.; and
 4 **to create** 118.29 (1) (bg), 118.29 (1) (br), ~~118.29 (2m)~~, 440.03 (15), 450.01 (1) (ar),
 5 450.01 (11g), 450.01 (11r), 450.01 (21) (b) and 450.11 (1) (b) of the statutes;
 6 **relating to:** ~~certifying certain school employees and volunteers to use~~
 7 ~~epinephrine auto-injectors on pupils, granting immunity from civil liability for~~
 8 ~~such use and granting rule-making authority.~~ **INSERT 1-8** ✓

Analysis by the Legislative Reference Bureau

This bill allows a person who is certified by the department of regulation and licensing (DORL) to use an epinephrine auto-injector to administer epinephrine to a pupil who experiences a life threatening allergic reaction. The bill defines "epinephrine auto-injector" as a device that is used for the automatic injection of epinephrine into the human body to prevent or treat a life-threatening allergic reaction. A person is immune from civil liability for an act or omission in using an epinephrine auto-injector under the bill unless the person engages in conduct that the person should realize creates a substantial and unreasonable risk of death or great bodily harm. Persons who are eligible for certificates under the bill include

INSERT
A

BILL

persons who are employed by or volunteer with an "educational agency", which is defined as a public, private or charter school or a county children with disabilities education board or a cooperative educational service agency. Also eligible are school bus drivers. In addition, to be eligible for a certificate, a person must pay a fee and satisfy any education, training or competency requirements established in rules promulgated by DORL with the advice of the medical examining board. The rules may require a person to pass an examination.

The bill allows an educational agency or employer of a school bus driver to reimburse a person for the fee required for a certificate. If an educational agency or school bus driver employer chooses to make such a reimbursement, it must also reimburse the person for the cost of a reasonable number of epinephrine auto-injectors. DORL is required to promulgate rules that specify what constitutes a reasonable number of epinephrine auto-injectors.

The bill also makes certain changes to current law regarding prescription orders. Under current law, a pharmacist may dispense an epinephrine auto-injector only if a health care practitioner has made a prescription order for the epinephrine auto-injector that identifies the patient who is to use the epinephrine auto-injector. This bill allows a pharmacist to dispense an epinephrine auto-injector to a person who holds a certificate issued under the bill if a health care practitioner makes a prescription order that identifies the certificate holder. A health care practitioner is not required to identify a patient on such a prescription order.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 118.29 (1) (b) of the statutes is created to read:

118.29 (1) (b) "Epinephrine auto-injector" has the meaning given in s. 440.03

(15) (a) 1. INSERT 2-3 ✓

SECTION 2. 118.29 (1) (br) of the statutes is created to read:

118.29 (1) (br) "Epinephrine certificate holder" means an individual who holds a valid certificate granted by the department of regulation and licensing under s. 440.03 (15) (b).

SECTION 3. 118.29 (2m) of the statutes is created to read:

118.29 (2m) EPINEPHRINE CERTIFICATE HOLDERS; CIVIL LIABILITY EXEMPTION

Notwithstanding chs. 441 and 448, an epinephrine certificate holder may use an

BILL

1 epinephrine auto-injector to administer epinephrine to any pupil who experiences
2 a life-threatening allergic reaction. An epinephrine certificate holder is immune
3 from civil liability for his or her acts or omissions in using an epinephrine
4 auto-injector under this subsection unless the act or omission constitutes a high
5 degree of negligence.

6 **SECTION 4.** 118.29 (4) of the statutes is amended to read:

7 118.29 (4) WRITTEN POLICIES. Any school board, county children with
8 disabilities education board, cooperative educational service agency or governing
9 body of a private school whose employees or volunteers may be authorized to
10 administer drugs or prescription drugs to pupils under ~~this section~~ sub. (2) (a) shall
11 adopt a written policy governing the administration of drugs and prescription drugs
12 to pupils under sub. (2) (a). In developing the policy, the school board, board, agency
13 or governing body shall seek the assistance of one or more appropriate health care
14 professionals who are employees of the school board, board, agency or governing body
15 or are providing services or consultation under s. 121.02 (1) (g). The policy shall
16 include procedures for obtaining and filing in the school or other appropriate facility
17 the written instructions and consent required under sub. (2) (a), for the periodic
18 review of such written instructions, for the storing of drugs and prescription drugs,
19 for record keeping and for the appropriate instruction of persons who may be
20 authorized to administer drugs or prescription drugs to pupils under ~~this section~~ sub.
21 (2) (a).

22 **SECTION 5.** 118.29 (5) of the statutes is amended to read:

23 118.29 (5) EXEMPTION. No employee except a health care professional may be
24 required to administer a drug or prescription drug to a pupil under ~~this section~~ sub.
25 (2) (a) by any means other than ingestion.

BILL

1 **SECTION 6.** 440.03 (15) of the statutes is created to read:

2 440.03 (15) (a) In this subsection:

3 1. "Educational agency" means a public school described under s. 115.01 (1), a
4 charter school, as defined in s. 115.001 (1), a private school, as defined in s. 115.001
5 (3r), a county children with disabilities education board or a cooperative educational
6 service agency.

7 2. "Epinephrine auto-injector" means a device used for the automatic injection
8 of epinephrine into the human body to prevent or treat a life-threatening allergic
9 reaction.

10 3. "Epinephrine certificate" means a certificate granted under par. (b).

11 4. "Epinephrine certificate holder" means an individual who holds a valid
12 epinephrine certificate.

13 5. "School bus operator" means a school bus operator validly authorized under
14 ss. 343.12 and 343.17 (3) (c) to operate a school bus.

15 6. "School employe or volunteer" means any of the following:

16 a. An individual who is employed by or volunteers at or with an educational
17 agency.

18 b. A school bus operator.

19 (b) The department shall grant an epinephrine certificate to an individual who
20 pays the fee specified in s. 440.05 (1) and submits evidence satisfactory to the
21 department of each of the following:

22 1. That the individual is a school employe or volunteer.

23 2. That the individual satisfies the requirements established in rules
24 promulgated under par. (c).

BILL

1 (c) With the advice of the medical examining board, the department shall
2 promulgate rules establishing the education, training or competency requirements
3 that an applicant must satisfy in order to be issued an epinephrine certificate. The
4 rules shall require an applicant to complete education or training that ensures that
5 the applicant is competent to use an epinephrine auto-injector to administer
6 epinephrine to a pupil who experiences a life-threatening allergic reaction and the
7 rules may require an applicant to pass an examination, administered or approved
8 by the department, to determine such competence.

9 (d) A epinephrine certificate remains in effect unless the certificate is
10 suspended or revoked by the department under par. (e).

11 (e) Subject to the rules promulgated under sub. (1), the department may
12 suspend or revoke an epinephrine certificate if it finds that the certificate holder is
13 not competent in the emergency use of an epinephrine auto-injector.

14 (f) An educational agency or employer of a school bus operator may reimburse
15 an epinephrine certificate holder for the fee specified in s. 440.05 (1). An educational
16 agency or employer of a school bus operator that reimburses an epinephrine
17 certificate holder under this paragraph shall reimburse the epinephrine certificate
18 holder for the cost of a reasonable number of epinephrine auto-injectors for use by
19 the epinephrine certificate holder. With the advice of the medical examining board,
20 the department shall promulgate rules that specify what constitutes a reasonable
21 number of epinephrine auto-injectors for purposes of this paragraph.

22 **SECTION 7.** 450.01 (1) (intro.) of the statutes is amended to read:

23 450.01 (1) (intro.) "Administer" means ~~the~~ any of the following:

BILL

1 ~~(ag) The direct application of a vaccine or a prescribed drug or device, whether~~
2 ~~by injection, ingestion or any other means, to the body of a patient or research subject~~
3 ~~by any of the following:~~

4 ~~SECTION 8. 450.01 (1) (a) and (b) of the statutes are renumbered 450.01 (1) (ag)~~
5 ~~1. and 2.~~

6 ~~SECTION 9. 450.01 (1) (ar) of the statutes is created to read:~~
7 ~~450.01 (1) (ar) The direct application of epinephrine to the body of pupil by an~~
8 ~~epinephrine certificate holder using an epinephrine auto-injector.~~

9 ~~SECTION 10. 450.01 (1) (c) of the statutes, as created by 1997 Wisconsin Act 68,~~
10 ~~is renumbered 450.01 (1) (ag) 3.~~

11 ~~SECTION 11. 450.01 (7) of the statutes is amended to read:~~
12 ~~450.01 (7) "Dispense" means to deliver a prescribed drug or device to an~~
13 ~~ultimate user or, research subject or epinephrine certificate holder by or pursuant~~
14 ~~to the prescription order of a practitioner, including the compounding, packaging or~~
15 ~~labeling necessary to prepare the prescribed drug or device for delivery.~~

16 ~~SECTION 12. 450.01 (11g) of the statutes is created to read:~~
17 ~~450.01 (11g) "Epinephrine auto-injector" has the meaning given in s. 440.03~~
18 ~~(15) (a) 1.~~

19 ~~SECTION 13. 450.01 (11r) of the statutes is created to read:~~
20 ~~450.01 (11r) "Epinephrine certificate holder" means an individual who holds~~
21 ~~a valid certificate granted by the department under under s. 440.03 (15) (b).~~

22 ~~SECTION 14. 450.01 (21) of the statutes is renumbered 450.01 (21) (intro.) and~~
23 ~~amended to read:~~

24 ~~450.01 (21) (intro.) "Prescription order" means an order transmitted orally,~~
25 ~~electronically or in writing by a practitioner for a any of the following:~~

BILL

1 (a) A drug or device for a particular patient.

2 **SECTION 15.** 450.01 (21) (b) of the statutes is created to read:

3 450.01 (21) (b) An epinephrine auto-injector for use by a particular
4 epinephrine certificate holder under s. 118.29 (2m).

5 **SECTION 16.** 450.09 (6) of the statutes is amended to read:

6 450.09 (6) MEDICATION PROFILE RECORD SYSTEM. Every pharmacy shall maintain
7 a medication profile record system of all drug products dispensed for a particular
8 patient or epinephrine certificate holder according to the minimum standards for
9 such systems established by the board by rule. Every practitioner shall maintain a
10 record of all drug products dispensed to each patient or epinephrine certificate holder
11 according to standards established by the appropriate examining board by rule. The
12 standards established by each examining board shall require the recording of all
13 renewal dispensing information required by federal and state law and related rules
14 and regulations.

15 **SECTION 17.** 450.11 (1) of the statutes is renumbered 450.11 (1) (a) and
16 amended to read:

17 450.11 (1) (a) No person may dispense any prescribed drug or device except
18 upon the prescription order of a practitioner. All Except as provided in par. (b), all
19 prescription orders shall specify the date of issue, the name and address of the
20 patient, the name and address of the practitioner, the name and quantity of the drug
21 product or device prescribed, directions for the use of the drug product or device and,
22 if the order is written by the practitioner, the signature of the practitioner. Any oral
23 prescription order shall be immediately reduced to writing by the pharmacist and
24 filed according to sub. (2).

25 **SECTION 18.** 450.11 (1) (b) of the statutes is created to read:

BILL

SECTION 18

1 450.11 (1) (b) The name and address of a patient is not required to be specified
2 on a prescription order specified in s. 450.01 (21) (b) if the prescription order specifies
3 the name and address of the epinephrine certificate holder.

4 SECTION 19. 450.11 (1m) of the statutes is amended to read:

5 450.11 (1m) ELECTRONIC TRANSMISSION. Except as provided in s. 453.068 (1) (c)
6 4., a practitioner may transmit a prescription order electronically only if the patient
7 or, for a prescription order specified in s. 450.01 (21) (b), the epinephrine certificate
8 holder approves the transmission and the prescription order is transmitted to a
9 pharmacy designated by the patient or epinephrine certificate holder.

10 SECTION 20. 450.11 (3) of the statutes is amended to read:

11 450.11 (3) PREPARATION OF PRESCRIPTION DRUGS. No person other than a
12 pharmacist or practitioner or their agents and employees as directed, supervised and
13 inspected by the pharmacist or practitioner may prepare, compound, dispense or
14 prepare for delivery for a patient any prescription drug for a patient or an
15 epinephrine auto-injector for use by an epinephrine certificate holder.

16 SECTION 21. 450.11 (4) (a) 5. of the statutes is amended to read:

17 450.11 (4) (a) 5. The full name of the patient or, for a prescription order specified
18 in s. 450.01 (21) (b), the full name of the epinephrine certificate holder.

19 (END) ✓

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1095/3ins
MDK:.....

1

INSERT A:

Under current law, certain school bus operators and school employees and volunteers are immune from civil liability for administering drugs to pupils under certain circumstances. To qualify for the immunity, the school bus operator, employee or volunteer must administer the drug in compliance with the written instructions of the pupil's parent or guardian or, in the case of a prescription drug, the written instructions of a health care practitioner. In addition, the pupil's parent or guardian must consent to the administration in writing. Also, the school bus driver, employee or volunteer may not be a health care professional and his or her administration of the drug must not constitute a high degree of negligence. Finally, with respect to a school employee or volunteer, the employee's or volunteer's school administrator or principal must provide written authorization for the administration.

Under this bill, a school bus operator, employee or volunteer is also immune from civil liability for using an epinephrine auto-injector to administer epinephrine to a pupil who experiences a life-threatening allergic reaction. The bill defines "epinephrine auto-injector" as a device that is used for the automatic injection of epinephrine into the human body to prevent or treat a life-threatening allergic reaction. To qualify for the immunity, the school bus operator, employee or volunteer must report the allergic reaction by dialing the telephone number "911" before using the epinephrine auto-injector. Also, as with the administration of drugs under current law, the school bus driver, employee or volunteer may not be a health care professional and his or her use of the epinephrine auto-injector must not constitute a high degree of negligence. Finally, with respect to a school employee or volunteer, the employee's or volunteer's school administrator or principal must provide written authorization for use of the epinephrine auto-injector.

2

INSERT 1-8:

3 ~~NO~~ of epinephrine auto-injectors on pupils by certain school employees and volunteers ~~NO~~

4

INSERT 2-3:

5 ~~NO~~ means a device used for the automatic injection of epinephrine into the human body
6 to prevent or treat a life-threatening allergic reaction.

7

SECTION 1. 118.29 (2) (a) 2m. ~~X~~ of the statutes is created to read:

8

118.29 (2) (a) 2m. May use an epinephrine auto-injector ~~✓~~ to administer

9

epinephrine to any pupil who experiences a life-threatening allergic reaction if,

↓

INS 2-3
cont

1 before administering the epinephrine, the school bus operator, employe or volunteer
2 reports the allergic reaction by dialing the telephone number "911".

3 **SECTION 2.** 118.29 (2) (a) 3. of the statutes is amended to read:

4 118.29 (2) (a) 3. Is immune from civil liability for his or her acts or omissions
5 in administering a drug ~~or~~, prescription drug or epinephrine to a pupil under subd.
6 1. ~~or~~, 2. or 2m unless the act or omission constitutes a high degree of negligence. This
7 subdivision does not apply to health care professionals.

History: 1983 a. 334; 1985 a. 146 s. 8; 1985 a. 218; 1987 a. 14, 390; 1989 a. 56, 102, 105; 1991 a. 103; 1997 a. 164.

8 **SECTION 3.** 118.29 (2) (b) of the statutes is amended to read:

9 118.29 (2) (b) Any school district administrator, county children with
10 disabilities education board administrator, cooperative educational service agency
11 administrator, public or private school principal or private school administrator who
12 authorizes an employe or volunteer to administer a drug ~~or~~, prescription drug or
13 epinephrine to a pupil under par. (a) is immune from civil liability for the act of
14 authorization unless it constitutes a high degree of negligence.

History: 1983 a. 334; 1985 a. 146 s. 8; 1985 a. 218; 1987 a. 14, 390; 1989 a. 56, 102, 105; 1991 a. 103; 1997 a. 164.

15 **SECTION 4.** 118.29 (4) of the statutes is amended to read:

16 118.29 (4) WRITTEN POLICIES. Any school board, county children with
17 disabilities education board, cooperative educational service agency or governing
18 body of a private school whose employes or volunteers may be authorized to
19 administer drugs ~~or~~, prescription drugs or epinephrine to pupils under this section
20 shall adopt a written policy governing the administration of drugs ~~and~~, prescription
21 drugs and epinephrine to pupils. In developing the policy, the school board, board,
22 agency or governing body shall seek the assistance of one or more appropriate health
23 care professionals who are employes of the school board, board, agency or governing
24 body or are providing services or consultation under s. 121.02 (1) (g). The policy shall



INS 2-3
cont

LRB-1095/3ins
MDK:.....

- 1 include procedures for obtaining and filing in the school or other appropriate facility
- 2 the written instructions and consent required under sub. (2) (a), for the periodic
- 3 review of such written instructions, for the storing of drugs ~~and~~, prescription drugs
- 4 and epinephrine auto-injectors,[✓] for record keeping and for the appropriate
- 5 instruction of persons who may be authorized to administer drugs ~~or~~, prescription
- 6 drugs or epinephrine to pupils under this section.

History: 1983 a. 334; 1985 a. 146 s. 8; 1985 a. 218; 1987 a. 14, 399; 1989 a. 56, 102, 105; 1991 a. 103; 1997 a. 164.

(end ins)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1095/3dn
MDK.....

↑
Jg

Representative Wasserman:

Under this version, a school bus operator, employee or volunteer is immune for using an epinephrine auto-injector under the same circumstances as the immunity for administering a drug to a pupil under current law, except that it is not necessary for the pupil's parent or guardian to consent to the use of the auto-injector in writing or for a parent, guardian or practitioner to provide written instructions regarding the use of the auto-injector. However, all of the other requirements that apply to the administration of drugs under current law also apply to the use of an epinephrine auto-injector.

If you have any questions or redraft instructions, please contact me.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1095/3dn
MDK:jlg:mrc

September 17, 1999

Representative Wasserman:

Under this version, a school bus operator, employee or volunteer is immune for using an epinephrine auto-injector under the same circumstances as the immunity for administering a drug to a pupil under current law, except that it is not necessary for the pupil's parent or guardian to consent to the use of the auto-injector in writing or for a parent, guardian or practitioner to provide written instructions regarding the use of the auto-injector. However, all of the other requirements that apply to the administration of drugs under current law also apply to the use of an epinephrine auto-injector.

If you have any questions or redraft instructions, please contact me.

Mark D. Kunkel
Legislative Attorney
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1999 BILL

Reger

- 1 AN ACT *to amend* 118.29 (2) (a) 3., 118.29 (2) (b) and 118.29 (4); and *to create*
- 2 118.29 (1) (bm) and 118.29 (2) (a) 2m. of the statutes; **relating to:** use of
- 3 epinephrine auto-injectors on pupils by certain school employees and
- 4 volunteers.

Analysis by the Legislative Reference Bureau

Under current law, certain school bus operators and school employees and volunteers are immune from civil liability for administering drugs to pupils under certain circumstances. To qualify for the immunity, the school bus operator, employee or volunteer must administer the drug in compliance with the written instructions of the pupil's parent or guardian or, in the case of a prescription drug, the written instructions of a health care practitioner. In addition, the pupil's parent or guardian must consent to the administration in writing. Also, the school bus driver, employee or volunteer may not be a health care professional and his or her administration of the drug must not constitute a high degree of negligence. Finally, with respect to a school employee or volunteer, the employee's or volunteer's school administrator or principal must provide written authorization for the administration.

Under this bill, a school bus operator, employee or volunteer is also immune from civil liability for using an epinephrine auto-injector to administer epinephrine to a pupil who experiences a life-threatening allergic reaction. The bill defines "epinephrine auto-injector" as a device that is used for the automatic injection of epinephrine into the human body to prevent or treat a life-threatening allergic reaction. To qualify for the immunity, the school bus operator, employee or volunteer

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✓ **INSERT A**

must report the allergic reaction by dialing the telephone number "911" before using the epinephrine auto-injector. Also, as with the administration of drugs under current law, the school bus driver, employee or volunteer may not be a health care professional and his or her use of the epinephrine auto-injector must not constitute a high degree of negligence. Finally, with respect to a school employee or volunteer, the employee's or volunteer's school administrator or principal must provide written authorization for use of the epinephrine auto-injector.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 118.29 (1) (bm) of the statutes is created to read:

2 118.29 (1) (bm) "Epinephrine auto-injector" means a device used for the
3 automatic injection of epinephrine into the human body to prevent or treat a
4 life-threatening allergic reaction.

5 **SECTION 2.** 118.29 (2) (a) 2m. of the statutes is created to read:

6 118.29 (2) (a) 2m. May use an epinephrine auto-injector to administer
7 epinephrine to any pupil who experiences a life-threatening allergic reaction if,
8 before administering the epinephrine, the school bus operator, employee or volunteer
9 reports the allergic reaction by dialing the telephone number "911".

10 **SECTION 3.** 118.29 (2) (a) 3. of the statutes is amended to read:

11 118.29 (2) (a) 3. Is immune from civil liability for his or her acts or omissions
12 in administering a drug ~~or~~, prescription drug or epinephrine to a pupil under subd.
13 1. ~~or~~, 2. or 2m. unless the act or omission constitutes a high degree of negligence. This
14 subdivision does not apply to health care professionals.

15 **SECTION 4.** 118.29 (2) (b) of the statutes is amended to read:

16 118.29 (2) (b) Any school district administrator, county children with
17 disabilities education board administrator, cooperative educational service agency
18 administrator, public or private school principal or private school administrator who

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1 authorizes an employe or volunteer to administer a drug ~~or~~, prescription drug or
2 epinephrine to a pupil under par. (a) is immune from civil liability for the act of
3 authorization unless it constitutes a high degree of negligence.

4 **SECTION 5.** 118.29 (4) of the statutes is amended to read:

5 118.29 (4) WRITTEN POLICIES. Any school board, county children with
6 disabilities education board, cooperative educational service agency or governing
7 body of a private school whose employes or volunteers may be authorized to
8 administer drugs ~~or~~, prescription drugs or epinephrine to pupils under this section
9 shall adopt a written policy governing the administration of drugs ~~and~~, prescription
10 drugs and epinephrine to pupils. In developing the policy, the school board, board,
11 agency or governing body shall seek the assistance of one or more appropriate health
12 care professionals who are employes of the school board, board, agency or governing
13 body or are providing services or consultation under s. 121.02 (1) (g). The policy shall
14 include procedures for obtaining and filing in the school or other appropriate facility
15 the written instructions and consent required under sub. (2) (a), for the periodic
16 review of such written instructions, for the storing of drugs ~~and~~, prescription drugs
17 and epinephrine auto-injectors, for record keeping and for the appropriate
18 instruction of persons who may be authorized to administer drugs ~~or~~, prescription
19 drugs or epinephrine to pupils under this section.

20 (END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1095/4ins
MDK.....

1 **INSERT A:**

2 ~~#2~~ or the telephone number for an emergency medical service provider ✓

3 **INSERT 2-9:**

4 ~~#2~~ or, in an area in which the telephone number "911" is not available, the telephone

5 number for an emergency medical service provider ~~#2~~

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1095/4dn

MDK.....

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Representative Wasserman:

This version is identical to the prior version, except that it requires a person to call the telephone number of an emergency medical service provider if the person is in an area in which "911" is not available.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1095/4dn
MDK:jlq:mrc

September 23, 1999

Representative Wasserman:

This version is identical to the prior version, except that it requires a person to call the telephone number of an emergency medical service provider if the person is in an area in which "911" is not available.

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SUBMITTAL FORM

LEGISLATIVE REFERENCE BUREAU Legal Section Telephone: 266-3561 5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 09/23/1999

To: Representative Wasserman

Relating to LRB drafting number: LRB-1095

Topic

Epinephrine pens in schools

Subject(s)

Education - miscellaneous

1. **JACKET** the draft for introduction

in the **Senate** ____ or the **Assembly** ____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

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